

**ENTERED**

January 03, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION

ALEX DAVILA,

Petitioner,

v.

BOBBY LUMPKIN,

Respondent.

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Civil Action No. 6:21-CV-00013

**MEMORANDUM OPINION AND ORDER**  
**ACCEPTING MEMORANDUM AND RECOMMENDATION**

Pending before the Court is the September 28, 2021 Memorandum and Recommendation (“M&R”) signed by Magistrate Judge Jason B. Libby. (Dkt. No. 18). In the M&R, Magistrate Judge Libby recommends that the Court grant Respondent Bobby Lumpkin’s Motion for Summary Judgment and deny *pro se* Petitioner Alex Davila’s Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254.

The Parties received proper notice and the opportunity to object to the proposed findings and recommendations.<sup>1</sup> See 28 U.S.C. § 636(b)(1). Davila filed timely objections. (Dkt. No. 19). The Court is to “make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b)(1)(C). However, the Court need not consider objections that “merely reurg[e] arguments contained in the original petition.” *Edmond v. Collins*, 8 F.3d 290, 293

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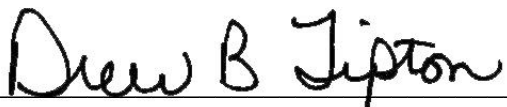
<sup>1</sup> Rule 72 normally governs review of a magistrate judge’s M&R. The comment to Rule 72 of the Federal Rules of Civil Procedure, however, states that Rule 72 is inapplicable in the habeas corpus context. See Fed. R. Civ. P. 72(b) advisory committee’s note to 1983 addition; *accord Nara v. Frank*, 488 F.3d 187, 195 (3d Cir. 2007).

n.7 (5th Cir. 1993). Relevant here, a court must liberally construe a *pro se* document. *Erickson v. Pardus*, 551 U.S. 89, 94, 127 S.Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007) (*per curiam*).

Davila raises one objection to the M&R. (Dkt. No. 19 at 1-2). He argues that the testimony presented during his trial about his past unadjudicated offenses involving sexual misconduct with a child should have been barred by the Fifth Amendment. (*Id.*). This is substantially the same argument that Davila made in his original habeas petition, (Dkt. No. 1 at 6-7), which the M&R addressed, (Dkt. No. 18 at 7-12). Thus, it need not be considered, and the Court overrules the objection. *See Edmond*, 8 F.3d at 293 n.7. Accordingly, the Court **ACCEPTS** the M&R as the opinion of the Court. The Court **GRANTS** Respondent Bobby Lumpkin's Motion for Summary Judgment. (Dkt. No. 16). The Court further **DISMISSES WITH PREJUDICE** Petitioner Alex Davila's habeas petition under 28 U.S.C. § 2254. (Dkt. No. 1).

It is SO ORDERED.

Signed on December 30, 2021.

  
DREW B. TIPTON  
UNITED STATES DISTRICT JUDGE